IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 264 of 2000

Date of decision: 3rd September, 2007

State of Himachal Pradesh .…….Appellant

Versus

Tek Chand …..Respondent

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No

For the appellants : Mr V K Verma, Addl. Advocate General

For the respondent : Mr. Anup Chitkara, Advocate.

Surinder Singh, J.

The Special Judge, acquitted the respondent for the offences charged under Section 3 read with Section 7 of the Essential Commodities Act, 1955, in short the Act, in E. C. Case No.1 of 1995 decided on 19.2.2000. The State felt aggrieved, thus filed the instant appeal.

Shorn of unnecessary details the prosecution case can be summed up thus:

The respondent was posted as Public Distribution Clerk Incharge of wholesale Depot at Salooni. In the month of July 1994 he was entrusted 88 quintals of levy sugar for its supply to the different fair price shop holders. It is alleged that he had shown in his stock register more quantity of levy sugar than actually supplied to Sh. Chain Lal (PW7) of Sanghni Depot, Partap Chand (PW8) of Singhadhar Depot, Naresh Kumar (PW9) of Nirohi Depot, Dharam Singh of Banjwar Depot, and that the respondent did not supply at all, the levy sugar to Sh. Ashok Kumar (PW15) whereas the respondent had shown having

[1] Whether reporters of the Local papers are allowed to see the judgment? yes

supplied, two quintals to him in his stock register. The total supply of sugar was shown to have been made 100 quintals by the respondent as against 88 quintals. In this way the respondent is alleged to have fudged the record and sold the sugar on higher rates i.e. Rs.1490/- per qunital as against Rs.905/- per quintal to different persons illegally by reflecting wrong entries in his stock-register.

Sh. Satya Parkash, Food and Supplies Inspector (PW10) on inquiry found that the cash memos did not bear the signatures of the depot holders, who had complained of supplying less quota of levy sugar than actual. Thus he took into possession three stock registers and two exercise books wherein the stock was shown to have been received by the depot holders and sent a complaint Ex.PV to the S.H.O. Police station Chmaba for the registration of the case against the respondent. The respondent was transferred and Sh.Gian Singh (PW2) was posted in his place. The police took into possession the relevant record and after investigation put up the challan against the respondent in the court for trial.

The charges were put, under the above sections, to the respondent to which he denied and claimed trial. After the complete trial, the learned Special Judge recorded the judgment of acquittal, which has been assailed in the present appeal on the grounds that the learned trial court did not appreciate the evidence on record in its right perspective and unrealistic standards to evaluate the direct and cogent evidence were set up, causing a prejudice to the case of the appellant.

I have heard Sh. V. K. Verma, learned Additional Advocate General for the appellant-State and Sh. Anup Chitkara, learned counsel for the respondent and have carefully gone through the evidence on record.

At the very out set I would like to say that the allegations against the respondent has been for infracting Order 5, of the Himachal Pradesh Specified Essential Commodities (Regulations and Distribution) Order, 1979, which reads as under:

> ***5. Supply by wholesalers.- No authorized wholesaler shall supply or offer or attempt to supply or cause to be supplied any specified consumer articles to any person other than a person who is a fair price shop holder or against***

a permit issued and except at such prices and in such quantum as may, from time to time be specified by the competent authority in this behalf and except under and, in accordance with the provisions of this order."

It is pertinent to note that the prosecution has not produced any witness to prove that the respondent had supplied or offered or attempted to supply or cause to be supplied any specified consumer articles to any person other than a person as specified above. Further the respondent has been authorized as wholesaler to supply the "specified consumer articles" only to fair price shop holder or against a permit issued from time to time by the competent authority. Clause 3 of the aforesaid order defines the "Specified Consumer article" which means an article declared by a notification in the official Gazette to be a consumer article for distribution through fair price. The prosecution has not brought on record any notification showing that the sugar in question was declared by any notification in the official Gazette as a consumer article. Further it is alleged by the prosecution that the respondent was supplied 88 quintals of levy sugar vide allotment order dated 20.7.1994 (Ex. PU) to supplying different quantities to 21 fair price shops as mentioned therein for the month of July, 1994. The prosecution while relying upon this document was further obliged to prove that in fact 88 quintals of said sugar was delivered to the respondent for onward distribution to the fair price shop holders, which fact has not been proved. The perusal of endorsement made on the allotment order (Ex. PU) shows that in addition to 88 quintals of sugar respondent was also required to be allotted eleven bags of sugar, by the Controller Food & Supply, to make available enough quota with each of the depot holders. Therefore, the statement of Satya Prakash (PW10), the Food & Supply Inspector that the respondent had illegally supplied 100 quintals of sugar to various depot holders against the supply order of 88 quintals and also that on inquiry he found that accused had shown 9 quintals sugar more than the actual supply thereof made to the five depot holders, is absolutely incorrect and is falsified from their own contention. It is also a revealing fact that the Stock register and cash memoes which were alleged to have been taken into possession by the police from

Gian Singh (PW2) after the transfer of respondent do not tally with the allotment order (Ex. PU) because the cash memoes Ex.P2 to Ex.P40 are dated w.e.f. 3.7.94 to 18.7.94 i.e. prior to the date of allotment order dated 20.7.1994. By no stretch of imagination it can be said that these cash memoes pertains to the levy sugar alleged to have been allotted to the respondent on 20.7.1994. Thus, the prosecution could not link the cash memoes aforesaid with the allotment order aforesaid.

Further, on perusal of statement of Gian Singh (PW-2) also makes it abundantly clear that though signatures of the depot holders used to be obtained on the cash memoes but this procedure was not strictly adhered to due to rush of work even by him but no criminal case was ever registered against him. The prosecution has not produced any witness or document on record which shows that the signatures of the depot holders were required to be taken on such cash memoes. Further according to him, entries in the ledger Ex.P1 were made on the basis of cash memoes and monthly reports, regarding the distribution of sugar, were sent to the Area Manager, District Food and Supply Corporation and Inspector Food and Supply and the witness has denied the fact that he had ever made any statement to the police that the respondent had not actually supplied any sugar on the basis of the vouchers Ex.P-2 to P-7. He was also confronted with his statement made to the police under Section 161 Cr. P.C to which he denied. Even PW-7 Chain Lal, Salesman of Fair Price Shop of Sanghni, PW8 Partap Chand and PW15 Ashok Kumar have admitted the fact in their cross-examination that at times they also did not sign the cash memoes which were issued by the respondent-accused regarding the supply of sugar etc.

Naresh Kumar (PW-9) is not the depot holder of fair price shop. It is his brother Chatro Ram who was not examined. However, he has stated that two quintals of sugar was brought by his brother vide Cash Memo Ex.P-7 but no complaint was made. But his testimony to prove the charge cannot be considered as relevant because he could not state about the date when his brother had purchased the sugar in question from the respondent.

The another witness is Ashok Kumar (PW-15). He has stated that he had brought six quintals of sugar in the month of July, 1994 on different dates from the

respondent which was entered by him in his stock register, but he did not receive two quintals of sugar vide cash memo Ex.P-4. The said cash memo is dated 7.7.94 which is not in his name. It has already been stated above that the sugar allotted vide letter Ex.P4 on 20.7.94 could not have been sold on 7.7.94 i.e. even before its allotment. Therefore, his testimony is also worth rejecting.

Similarly, Dharam Singh (PW-17) has stated that he did not purchase the levy sugar on 7.7.1994 vide cash memo Ex.P-2 from the respondent but made no complaint regarding supply of less sugar. The cash memo aforesaid is not relatable to the supply order Ex. PU.

It is apparent from the above discussion that the stock registers were maintained only by the Fair Price Shop holders and the cash memoes as stated above pertain to the period prior to issue of allotment order. Perusal of stock register also reveals that it did not contain any certificate regarding the pages and for more about 3-4 months the entire entries were made in a hay way manner, on one page only. Therefore, the possibility of fabricating the record on a later date by the depot holders who were under the direct influence of PW10 Satya Prakash Food & Supply Inspector cannot be ruled out.

Therefore, on reappraisal and critical examination of the evidence aforesaid, I find that the evidence of the prosecution is quite shaky, insufficient and unworthy of credence to sustain conviction of the respondent. Therefore, no reliance can be put thereupon.

In view of the above contradictory, discrepant and unrealistic evidence, the respondent was rightly acquitted by the trial court. In my considered opinion, the reasoning recorded by the learned Special judge, for acquitting the respondent, is not perverse. Hence, the appeal is dismissed. The respondent is discharged of his bail bonds entered upon by him during the proceedings of this case.

3rd September, 2007
(D)

(Surinder Singh),
Judge.